COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PAUL COCCHI d/b/a HICKORY ROCK FARM	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF LUDLOW**
Docket No. F271990		
PAUL COCCHI d/b/a PAUL'S TREE SERVICE	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF LUDLOW**
Docket No. F271991		Promulgated: September 21, 2006

These are appeals under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain personal property in the Town of Ludlow assessed to the appellant, doing business as one or the other entity, under G.L. c. 59, §§ 2 and 18, for fiscal year 2004.

Commissioner Gorton heard these appeals, and, in accordance with G.L. c. 58A, § 1A and 831 CMR 1.30, issued single-member decisions for the appellee. Upon further review and on his own motion, Commissioner Gorton issued revised decisions for the appellant, which are promulgated simultaneously with these findings.

These findings of fact and report are made pursuant to requests by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Michael A. Ugolini, Esq. for the appellant.

David J. Martel, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Docket No. F271990 - Paul Cocchi d/b/a Hickory Rock Farm

On January 1, 2003, Paul Cocchi, the appellant in this appeal, was in possession of certain personal property located at 312 Miller Street in the Town of Ludlow. The Board of Assessors of Ludlow valued the property at $48,200 and assessed to the appellant a tax thereon, at the rate of $18.52 per $1,000, in the amount of $892.66. The appellant timely paid $446.34, or slightly more than one-half, of the tax assessed.[1] In accordance with G.L. c. 59, § 29, the appellant also appropriately filed a form of list for fiscal year 2004.[2] Ludlow's Treasurer/Collector sent out the relevant tax bill on or about December 31, 2003. The appellant timely filed an application for abatement

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[1] To prosecute an appeal from the assessors' denial of his application for abatement of tax on personal property, the appellant must have paid at least one-half of the tax. *See* G.L. c. 59, §§ 64 and 65.

[2] G.L. c. 59, § 29 provides, in pertinent part, that:

> Assessors before making an assessment shall give seasonable notice thereof to all persons subject to taxation in their respective towns. Such notice shall be posted in one or more public places in each town, or shall be given in some other sufficient manner, and shall require the said persons to bring into the assessors, before a date therein specified, in case of residents a true list, containing the items required by the commissioner in the form prescribed by him under section five of chapter fifty-eight of all their personal estate not exempt from taxation.

with the assessors on January 30, 2004. On March 2, 2004, the assessors denied the appellant's application, and on March 16, 2004, the appellant seasonably appealed the denial to the Appellate Tax Board ("Board"). On the basis of these facts, Commissioner Gorton found and ruled that the Board had jurisdiction over this appeal.

In this appeal, the appellant sought abatement for "inventory and a backhoe." The assessors had valued the inventory at $500 and the backhoe at $47,700. The appellant asserted that the value of the backhoe was only about $25,000, not the $47,700 assessed, and further argued that, under G.L. c. 59, § 8A, the backhoe was subject to an excise tax at the rate of $5.00 per $1,000, not a personal property tax at the rate of $18.52 per $1.000.[3]

Based on all of the evidence and reasonable inferences drawn therefrom, Commissioner Gorton found that the appellant met his burden of showing that the assessors had

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[3] G.L. c. 59, § 8A provides, in pertinent part:

> Any person . . . engaged principally in agriculture, who owns farm machinery and equipment . . . shall annually, on or before March first, make a return on oath to the assessors of the town where such machinery or equipment . . . are located, setting forth the make, age, model, if any, and purchase price of such machinery and equipment . . . . If the assessors are satisfied of the truth of the return they shall assess such machinery and equipment . . . at the rate of five dollars per one thousand dollars of valuation, as determined by the commissioner of revenue, of such machinery and equipment . . . and such persons shall be otherwise exempt from taxation on these classes of property under this chapter.

overvalued the backhoe. The invoice for the backhoe indicated that the appellant purchased it new in December 1999 for $53,000. Testimony from a knowledgeable backhoe salesman with experience in valuing trade-in and resale backhoes was introduced into evidence by the appellant. The salesman indicated that the backhoe had depreciated approximately fifteen-percent per year and had a value for trade-in purposes of around $28,000 as of February 1, 2003, within one month of the January 1, 2003 assessment date for fiscal year 2004. In valuing the backhoe for fiscal year 2004, the assessors had simply applied ten-percent depreciation to the backhoe's original sale price. Commissioner Gorton found that the salesman's estimate of the backhoe's trade-in value represented the low end of its value range while the assessors' depreciated value represented its high end. Commissioner Gorton found that the value of the backhoe was most likely in the mid-range of those values so he depreciated the backhoe approximately ten-percent per year and valued it at $38,637, thereby reducing the assessment by $9,063 for fiscal year 2004.

Commissioner Gorton further found that the appellant failed to meet his burden in showing that the inventory was overvalued. The appellant introduced no evidence either describing the so-called inventory or valuing it as of

January 1, 2003. Accordingly, Commissioner Gorton upheld the presumed validity of the assessment on the inventory.

Finally, with respect to the appellant's assertion that the backhoe should be valued and taxed under G.L. c. 59, § 8A,[4] instead of the property tax sections, Commissioner Gorton found that the appellant failed to prove that he was "engaged principally in agriculture" as required by § 8A, because the appellant did not introduce sufficient evidence on this issue. The appellant's bare assertion, without more, failed to provide Commissioner Gorton with the necessary information for determining the extent to which the appellant was "engaged principally in agriculture." Furthermore, Commissioner Gorton found that the appellant failed to meet his burden of establishing the value of the backhoe at issue for purposes of § 8A. Specifically, Commissioner Gorton found that the appellant did not present any evidence of the backhoe's "valuation as determined by the commissioner of revenue," as required by § 8A. Accordingly, Commissioner Gorton found that the appellant did not establish the appropriateness of valuing and taxing the backhoe under § 8A and, therefore, found that it was proper for the assessors to value and tax it under G.L. c. 59, §§ 2 and 18.

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[4] See footnote 3, *supra*.

Based on these subsidiary findings, Commissioner Gorton revised his original decision and decided this appeal for the appellant. In his revised decision, Commissioner Gorton reduced the value of the backhoe by $9,063 to $38,637, and granted a tax abatement in the amount of $167.85.

Docket No. F271991 - Paul Cocchi d/b/a Paul's Tree Service

On January 1, 2003, Paul Cocchi, the appellant in this appeal, was in possession of certain personal property located at 312 Miller Street in the Town of Ludlow. The Board of Assessors of Ludlow valued the property at $7,190 and assessed to the appellant a tax thereon, at the rate of $18.52 per $1,000, in the amount of $133.16. The appellant timely paid $66.59, or slightly more than one-half, of the tax assessed.[5] In accordance with G.L. c. 59, § 29, the appellant also appropriately filed a form of list for fiscal year 2004.[6] Ludlow's Treasurer/Collector sent out the relevant tax bill on or about December 31, 2003. The appellant timely filed an application for abatement with the assessors on January 30, 2004. On March 2, 2004, the assessors denied the appellant's application, and on March 16, 2004, the appellant seasonably appealed the denial to

[5] See footnote 1, *supra*.
[6] See footnote 2, *supra*.

this Board. On the basis of these facts, Commissioner Gorton found and ruled that the Board had jurisdiction over this appeal.

In this appeal, the appellant sought abatement for "inventory, ten chainsaws and a stumpgrinder." He did not contest the $300 value that the assessors placed on miscellaneous furniture and fixtures. The assessors had valued the inventory at $300, the chainsaws at $2,410, and the stumpgrinder at $4,180. As in the previous appeal, the appellant offered little evidence describing or valuing the inventory. With respect to the chainsaws, the appellant claimed that they were exempt. With respect to the stumpgrinder, the appellant asserted that it was only worth about $2,000.

Based on all of the evidence and reasonable inferences drawn therefrom, Commissioner Gorton found that the appellant failed to meet his burden of showing that the inventory had been inappropriately or excessively valued by the assessors. The appellant did not introduce sufficient evidence in this regard, and Commissioner Gorton, therefore, upheld the presumed validity of the assessment. The appellant did, however, introduce a 1992 invoice for the stumpgrinder showing that its cost new was $7,300. The appellant also presented a photograph depicting the present

state of the machine, which was consistent with its condition on January 1, 2003. The appellant testified that because of its age, condition, and limitations, and according to sales data garnered from on-line research, it was only worth approximately $2,000 as of the January 1, 2003 assessment date. Commissioner Gorton agreed with the appellant's evaluation of the stumpgrinder's value finding that the appellant was knowledgeable about and familiar with the value of this piece of equipment.

Finally, Commissioner Gorton found that the appellant met his burden of establishing that, under G.L. c. 59, § 5, cl. 20,[7] the chainsaws were exempt as "the tools of his trade if a mechanic, to any amount." At all relevant times, the appellant was a tree surgeon, an occupation which Commissioner Gorton found required skill, training, and the ability to work with one's hands and with hand tools. Consistent with a survey of various dictionary definitions, such as THE AMERICAN HERITAGE COLLEGE DICTIONARY (4th ed., 2002) 859 wherein a "mechanic" is defined as "[a] worker skilled in making, using, or repairing machines, vehicles, and tools," and BALLENTINE'S LAW DICTIONARY (3rd ed., 1969) 786, wherein a "mechanic" is defined as a "skilled

[7] Clause 20 provides, in pertinent part, that the following property shall be exempt: "The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount."

workman," and BOUVIER'S LAW DICTIONARY (3rd revision, 1914) 2184, wherein a "mechanic" is defined as "any skilled worker with tools" or "one actually engaged with his own hands in constructive work," Commissioner Gorton determined that, for purposes of clause 20, a tree surgeon, like the appellant, is a "mechanic."

Moreover, and again consistent with dictionary definitions, Commissioner Gorton found that "the tools of the [appellant's] trade" include chainsaws. Illustrative definitions include: THE AMERICAN HERITAGE COLLEGE DICTIONARY at 1449, wherein "tool" is defined as "[a] device such as a saw, used to perform or facilitate manual or mechanical work;" BOUVIER'S LAW DICTIONARY at 3285, wherein "tools" are defined as "the implements which are commonly used by the hand of one man in some manual labor, necessary for his subsistence;" and BALLENTINE'S LAW DICTIONARY at 1283, wherein "tools of trade" are defined as "instruments or implements used in the trade . . . of the owner." Commissioner Gorton observed that chainsaws are necessarily used in a tree surgeon's trade and are power hand-held implements that are relatively uncomplicated and inexpensive.

Based on these subsidiary findings, Commissioner Gorton revised his original decision and decided this appeal for the appellant. In his revised decision,

Commissioner Gorton reduced the value of the stumpgrinder by $2,180 to $2,000 and exempted in full the $2,410 value attributed to the chainsaws. Accordingly, a tax abatement was granted in the amount of $85.00.

OPINION

G.L. c. 59, § 2, provides, in pertinent part, that: "All property, real and personal, situated within the commonwealth, and all personal property of the inhabitants of the commonwealth wherever situated, unless expressly exempt, shall be subject to taxation." G.L. c. 59, § 18 provides, in pertinent part, that: "First, All tangible personal property . . . shall, unless exempted by section five, be taxed to the owner in the town where it is situated on January first."

Valuation

The assessors are required to assess the personal estate subject to taxation at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellants have the burden of proving that the property has a lower value than that assessed. "'The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.'" ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. at 245).

In appeals before this Board, a taxpayer "'may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation.'" ***General Electric Co. v. Assessors of Lynn,*** 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In these appeals, Commissioner Gorton found that the appellant, doing business as one or the other entity, failed to introduce sufficient evidence demonstrating that his inventory was overvalued. He did, however, introduce affirmative information to show that the values placed by

the assessors on his backhoe and stumpgrinder were excessive. With respect to his backhoe, the original invoice and testimony from a knowledgeable backhoe salesman provided Commissioner Gorton with sufficient credible information upon which to base his finding of value. With respect to the stumpgrinder, the original invoice and the appellant's testimony provided Commissioner Gorton with sufficient credible information upon which to rely to determine the value of the stumpgrinder. Commissioner Gorton ruled that an owner of property who is familiar with its characteristics and acquainted with its actual and potential uses, and has had experience in dealing with it, may properly testify as to its value. ***Menici v. Ortan Crane and Shovel Co.***, 285 Mass. 499, 503 (1934).

In addition, the appellant asserted that his backhoe should be valued and taxed under the more favorable provisions of G.L. c. 59, § 8A,[8] instead of the property tax sections. Commissioner Gorton found, however, that the appellant did not introduce sufficient information to support a finding that he was "engaged principally in agriculture." Moreover, Commissioner Gorton found that the appellant failed to present any evidence of the backhoe's "valuation as determined by the commissioner of revenue,"

[8] See footnote 3, *supra*.

as required by § 8A. Accordingly, Commissioner Gorton found and ruled that the appellant did not establish the appropriateness of valuing and taxing the backhoe under § 8A, and, therefore, concluded that it was proper for the assessors to value and tax it under §§ 2 and 18.

On the basis of these subsidiary findings and rulings, Commissioner Gorton found and ruled that the appellant, doing business as one or the other entity, met his burden in proving that both the backhoe and the stumpgrinder were overvalued, but failed to meet his burden in proving that his inventory was overvalued and that his backhoe was entitled to be valued and taxed under § 8A. Accordingly, Commissioner Gorton valued the backhoe and stumpgrinder at $38,637 and $2,000, respectively.

Exemption

G.L. c. 59, § 5, c1. 20 exempts from the property tax, under G.L. c. 59, §§ 2 and 18, "[t]he wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount." The appellant claimed that, as a tree surgeon, he was a "mechanic" as that term is used in clause 20 and was entitled to an exemption for his chainsaws, which he considered to be the "tools of his trade." A party claiming a tax exemption bears a grave burden of proving

the claim. ***Sturdy Memorial Foundation, Inc. v. Assessors of North Attleboro***, 47 Mass. App. Ct. 519, 523 (1999).

After surveying various dictionary definitions and construing this exemption statute narrowly, *see* ***Mahony v. Assessors of Watertown***, 362 Mass. 210, 214 (1972), Commissioner Gorton agreed with the appellant's claims. Familiar principles of statutory construction provide that the words of a statute are the main source for the ascertainment of a legislative purpose, ***Tilton v. City of Haverhill***, 311 Mass. 572, 577 (1942), and they are to be construed according to their common and approved usage unless they are technical in nature. G.L. c. 4, § 6, cl. 3. Commissioner Gorton found and ruled here that based on definitions indicative of common and approved usage or those with a more distinct legal meaning, the appellant, as a tree surgeon, was a "mechanic" and his chainsaws were "tools of his trade," for purposes of clause 20. Accordingly, Commissioner Gorton abated, as exempt, the entire $2,419 assessment placed on the appellant's chainsaws for fiscal year 2004.

Conclusion

In reaching his opinion of fair cash value in these appeals, the presiding Commissioner was not required to believe the testimony of any particular witness or to adopt any particular method of valuation suggested. Rather, he could accept those portions of the evidence that he determined had more convincing weight. ***Foxboro Associates v. Board of Assessors of Foxborough,*** 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 473 (1981); ***Assessors of Lynnfield v. New England Oyster House, Inc.,*** 362 Mass. 696, 702 (1972). In evaluating the evidence before him, the presiding Commissioner selected among the various elements of value and formed his own independent judgment of fair cash value. ***General Electric v. Assessors of Lynn,*** 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn,*** 392 Mass. 296, 300 (1984).

The presiding Commissioner need not specify the exact manner in which he arrived at his valuation. ***Jordan Marsh v. Assessors of Malden,*** 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." ***Assessors of Quincy v. Boston Consol. Gas Co.,*** 309 Mass. 60, 72 (1941).

"The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the [presiding Commissioner]." ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605 (1977).

"'The burden of proof is upon the [appellant] to make out its right as a matter of law to abatement of the tax.'" ***Schlaiker v. Board of Assessors of Great Barrington,*** 365 Mass. at 245 (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. at 55). The appellant must show that it has complied with the statutory prerequisites to its appeal, ***Cohen v. Assessors of Boston,*** 344 Mass. 268, 271 (1962), and that the assessed valuation of its property was improper. See ***Foxboro Associates v. Board of Assessors of Foxborough,*** 385 Mass. at 691. The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***Schlaiker v. Board of Assessors of Great Barrington,*** 365 Mass. at 245. Commissioner Gorton ruled here that the appellant met his burden of proving that the backhoe and stumpgrinder were overvalued and should be valued at $38,637 and $2,000, respectively. He also ruled that the chainsaws were exempt. In addition, Commissioner Gorton ruled that the appellant failed to

prove that his inventory was overvalued and his backhoe should be valued and taxed under G.L. c. 59, § 8A.

On this basis, Commissioner Gorton decided that the backhoe and stumpgrinder were overvalued by $9,063 and $2,180, respectively, and the chainsaws, which had been valued at $2,410, were exempt.

Therefore, Commissioner Gorton decided these appeals for the appellant and granted tax abatements in the amount of $167.85 for docket no. F271990 and $85.00 for docket no. F271991.

THE APPELLATE TAX BOARD

By:_____
Donald E. Gorton, III, Commissioner

A true copy,

Attest: _____
Assistant Clerk of the Board